

STATE OF MICHIGAN
COURT OF APPEALS

ERNEST F. FRIEDMAN,

Plaintiff-Appellant,

v

GARY BAILEY, LAW OFFICE OF ALLABEN,
VANDERWEYDEN, TIMMER & BANDEEN,
P.C., and WAUSAU INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED

April 21, 2000

No. 211930

Wayne Circuit Court

LC No. 98-811401-CK

Before: Collins, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order dismissing this case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an attorney, represented defendant Bailey in a worker's compensation case. Defendant terminated plaintiff's representation, and retained defendant Law Office of Allaben, Vanderweyden, Timmer & Bandeen, P.C., to represent him. The firm informed plaintiff that the matter had been redeemed, and requested that he state the amount that he was claiming on his attorney fee lien. Plaintiff filed a motion in the Worker's Compensation Bureau to enforce his lien; however, after he failed to appear at a hearing, the magistrate dismissed the motion.

Rather than appeal the dismissal to the Workers' Compensation Appellate Commission (WCAC), plaintiff filed a complaint in circuit court alleging breach of contract and violation of attorney lien. He moved for and was granted a temporary restraining order to prevent distribution of the settlement. At a subsequent hearing, the circuit court dismissed the case on the ground that it lacked subject matter jurisdiction to adjudicate a worker's compensation fee matter, and assessed costs in the amount of \$1000.

Following the dismissal of his circuit court case, plaintiff filed a claim of appeal in the WCAC, challenging the dismissal of his motion to set attorney fee lien. The WCAC treated the claim as a motion for reinstatement, and denied same. A second petition for attorney fees was dismissed when plaintiff

failed to appear at a hearing. Plaintiff then filed a third petition for attorney fees, which was pending at the time briefs were filed in this matter.

The issue of subject matter jurisdiction is a question of law that we review de novo. *W A Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995).

The Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*; MSA 17.237(101) *et seq.*, provides that any dispute regarding compensation or other benefits must be submitted to the Bureau. MCL 418.841(1); MSA 17.237(841)(1). The WDCA also provides that payment of attorney fees is subject to approval by a magistrate. MCL 418.858(1); MSA 17.237(858)(1). In the event of a dispute regarding fees, an interested party may seek a hearing before the Bureau. *Id.* Review of the magistrate's order may be had by the Director. *Id.* In turn, review of the Director's order may be had by the WCAC. *Id.*

Plaintiff argues that the circuit court erred by dismissing this case for lack of subject matter jurisdiction. We disagree and affirm. MCL 418.858(1); MSA 17.237(858)(1) specifically requires Bureau approval of payment of attorney fees. The Bureau and, if need be, the WCAC on appeal from the Bureau, is the appropriate forum in which to resolve an attorney fee dispute. *In re Attorney Fees of Kelman, Loria, Downing, Schneider & Simpson*, 406 Mich 497, 504-506; 280 NW2d 457 (1979); *Nelson v Jensen*, 26 Mich App 62, 68; 182 NW2d 72 (1970). The circuit court correctly concluded that it lacked subject matter jurisdiction to adjudicate the fee dispute, and properly dismissed the case, notwithstanding the fact that defendants had not filed a formal motion for dismissal. If a court recognizes that it lacks subject matter jurisdiction in a particular case, dismissal on a sua sponte basis is appropriate. *Fox v Board of Regents of the University of Michigan*, 375 Mich 238, 242-243; 134 NW2d 146 (1965).

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski